

Attorneys Listed on the Next Page

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL A. CRUZ, and JOHN D. HANSEN,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

DOLLAR TREE STORES, INC.,

Defendant.

CASE NO. C 07 2050 SC

**SUPPLEMENTAL JOINT CASE
MANAGEMENT STATUS
CONFERENCE STATEMENT**

DATE: August 1, 2008

TIME: 10:00 a.m.

DEPT: Courtroom 1

JUDGE: Hon. Samuel Conti

ROBERT RUNNINGS individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

DOLLAR TREE STORES, INC.,

Defendant.

CASE NO. C 07 04012 SC

COMPLAINTS FILED: April 11, 2007

July 6, 2007

TRIAL DATES: No dates set.

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1 (1) Introduction.

2 By Order dated November 20, 2007, the Court consolidated the above
 3 actions. The *Cruz and Hansen* action alleges that the Plaintiff Store Managers were
 4 improperly classified as exempt employees and raises claims in three categories:
 5 overtime claims, wage statement claims and meal and rest period claims. The *Runnings*
 6 lawsuit also raises the issue of classification of the Store Manager position. Jurisdiction
 7 in the *Cruz Hansen* matter is predicated upon federal question jurisdiction (the complaint
 8 contains an FLSA claim) and CAFA jurisdiction. Jurisdiction in the *Runnings* case is
 9 predicated upon CAFA. Jurisdiction is not being contested at this time.

10 (2) Status of the Lawsuit.

11 All parties filed a joint case management statement on November 9, 2007 in
 12 preparation for a case management conference that was held on November 16, 2007.
 13 This statement is supplemental to that statement, and provides a report on what has
 14 occurred since November 16, 2007, as well as discusses issues which the parties
 15 anticipate occurring in the near future.

16 (3) Events since November 16, 2007.

17 By motions filed on January 19, 2008, Defendant moved for summary
 18 judgment regarding Hansen's and Runnings' claims.¹ By Order dated July 8, 2008, the
 19 Court denied these motions. The parties deferred discovery during the pendency of the
 20 motions.

21 (4) Anticipated Future Events.

22 (a) Counsel for Hansen and Cruz (the Edgar Law Firm) is
 23 considering substituting out of the case, and may be in a position to advise the Court of
 24 such substitution during the case management conference on August 1, 2008. If such
 25 substitution does not occur, Defendant contemplates raising issues regarding the ability
 26 of the Edgar Law Firm to continue as counsel for Plaintiffs Hansen and Cruz in this
 27

28 ¹ Defendant did not so move regarding Cruz's claims.

1 action, either in the form of a motion to disqualify or as part of Defendant's motion to
2 dismiss the class allegations.

3 (b) Plaintiffs contemplate propounding discovery and taking
4 depositions. To date, the Parties have exchanged initial disclosures and written
5 discovery. Defendant has deposed all Plaintiffs. The parties presently have a dispute,
6 which may be presented to the Court if they are unable to resolve it in further meet and
7 confer sessions, regarding the extent of discovery allowable in the pre-class certification
8 stage of these lawsuits. Defendant has proposed bifurcation of discovery with the initial
9 phase relating to Plaintiffs' individual claims and the propriety of class treatment.
10 Defendant proposes deferring to a second phase all discovery regarding the
11 identification of alleged class members and the calculation of class-wide damage
12 allegations.

13 Plaintiffs' position is that substantial cross-over between merits and class
14 certification issues exist such that bifurcating discovery is inefficient. Plaintiffs state that
15 putative class members to this action are both interested parties and potential witnesses
16 under FRCP 26, and, as such Plaintiffs need the identities and contact information of
17 putative class members in order to conduct discovery relevant to both merits and
18 certification issues (Plaintiffs requested the class list via its first set of discovery,
19 propounded in 2007, on which Plaintiffs anticipate filing a Motion to Compel shortly).
20 Plaintiffs' position is that, without being afforded the same opportunity as Defendant
21 Dollar Tree to interview putative class members to this action (which includes both
22 current and former Dollar Tree Store Managers), Plaintiffs cannot conduct meaningful
23 discovery to support their Motion for Class Certification and/or oppose Defendant's
24 various motions.

25 Defendant disputes that contention, particularly in this case where Runnings'
26 counsel sent a letter to various Dollar Tree retail locations within California, addressed to
27 the current Store Manager of these locations at the commencement of the litigation
28 explaining the lawsuit, and asking putative class members to contact counsel to discuss

1 the case. Hence, Defendant contends that Plaintiffs' counsel has already contacted
2 putative class members and presumably received whatever information such individuals
3 were willing to provide.² Additionally, Defendant has been informed that Runnings
4 himself has contacted Store Managers to discuss the lawsuit.

5 Regarding possible discovery issues, the parties do not believe a referral to
6 a United States Magistrate Judge is necessary.

7 (c) The next stage of the litigation will involve motions relating to
8 dismissal of class allegations or class certification. Plaintiffs believe that, because
9 discovery in this case has just commenced in earnest, it is premature to set a date for
10 them to bring a class certification motion. Plaintiffs propose that the Court set a further
11 Case Management Conference between 90 and 120 days from August 1, 2008, so that
12 Plaintiffs may conduct some preliminary discovery (e.g., production of the class list and
13 documents) so that they may be in a better position to evaluate the extent and scope of
14 the remaining discovery needed for their Motion for Class Certification, and advise the
15 Court as to this issue.

16 Defendant, on the other hand, believes that it can bring a motion to dismiss the
17 class allegations to be heard by about October 1, 2008 and intends to file such a motion.
18 Defendant believes that there are many issues relating to the individualized nature of
19 whether an employee works over 50% of his/her time in exempt work which preclude
20 class treatment. Defendant also views meal and rest period contentions as inherently
21 unsuitable for class treatment as they raise individualized circumstances of whether an
22 employee took advantage of the availability of meal and rest breaks. Defendant also
23 intends to raise issues regarding the adequacy of representation by the named Plaintiffs
24 and by their counsel. Plaintiffs, on the other hand, believe that common questions of
25 fact and law predominate, and that such cases are otherwise properly maintained on a
26 class basis.

27 ² By motion filed on August 6, 2007, Defendant sought a TRO halting what it contended
28 were inappropriate contacts with the putative class. By Order dated August 8, 2007, the
Court (Judge Hamilton) denied Defendant's TRO.

1 (d) As to ADR issues, the parties have had several conferences with the
2 ADR unit, but have believed that ADR is premature, given the pendency of the individual
3 motions for summary judgment, and now, given the pendency of class certification
4 issues.

5 DATED: July 25, 2008

KAUFF MCCLAIN & MCGUIRE LLP

7 By: Ma SL
8 MAUREEN E. MCCLAIN

9 Attorneys for Defendant
DOLLAR TREE STORES, INC.

10 DATED: July 25, 2008

SCOTT COLE & ASSOCIATES, APC

12 By: _____
13 SCOTT EDWARD COLE

14 Attorneys for Plaintiff
ROBERT RUNNINGS

15 DATED: July 25, 2008

EDGAR LAW FIRM

17 By: _____
18 JEREMY R. FIETZ

19 Attorneys for Plaintiffs
MIGUEL CRUZ AND JOHN HANSEN

20 4852-1634-0482.1

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